S.B.Civil Writ Petition No.7028/2007
Purushuttam Lal & Anr.
vs
The District Judge, Churu

Date of order : 26.10.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.Manish Shishodia, or the petitioners.

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Heard learned counsel for the petitioners.

The petitioners are aggrieved against the order of the appellate court by which the appellate court allowed the appeal of the defendants-respondents and set aside the injunction order passed by the trial court dated 23rd July, 2006. Hence, plaintiffs-petitioners preferred this writ petition to challenge the order of the appellate court dated 14th Sept., 2007.

According to learned counsel for the petitioners the petitioners' property had one wall. It became damaged, therefore, in support to that wall he constructed a support wall. Beyond the original wall the property of the defendants is situated. The defendants wanted to remove the part of the petitioners' main wall which was beyond support wall and started raising construction, therefore, the

petitioners-plaintiffs filed the suit for injunction against the defendants-respondents. The trial court granted injunction and restrained the defendants from raising the construction but the appellate court reversed the findings of the trial court and dismissed the injunction application on the basis of the documents, which alleged to have been were signed by the plaintiffs predecessor in title. It is submitted that it was not a case of the even defendants that defendants encroached upon the plaintiffs' land and raised the construction of the wall more than 30 years ago. Defendants case was that they are owner of the wall. It is also submitted that there was no reference of any of the admission of the plaintiffs' predecessor made as back as on 1st April, 1971 in the reply filed by the defendants. In view of the above reasons, the first appellate court committed serious error of law in considering this evidence for allowing the appeal of the defendants.

I considered the submissions of learned counsel for the petitioners and perused the pleadings as well as the reasons given by the two courts below. The petitioners' own case is that there was already existing boundary wall of his property. The petitioners pleaded that since that wall was not in good condition, therefore, a new wall was constructed

by his predecessor in title to give support to the pre-existing boundary wall of their property. Therefore, it is admitted case that since more than last 30 years two walls separating the two neighours – the plaintiffs and defendants are in existence. The wall which has been described as the support wall has been alleged to be the wall of the plaintiffs and the defendants submitted that another wall was constructed by the defendants, which plaintiffs are wrongly alleging their wall. It is also submitted that said wall was constructed as back as in the year 1962 and since then the position is as it is.

In view of the facts referred above, if the finding recorded by the first appellate court is considered then that appears to be just and proper because of the reason of proper consideration of the factual aspect of the matter and it is improbable that a person having his own boundary wall when will found that the wall in dilapidated condition instead of repairing that wall he will raise another wall to support it. Further, it is also improbable that such construction of wall of one side of dilapidated wall will not allow the that dilapidated wall to fall in other side.

In view of the above improbability and in view

reasons given by the courts below, I do not find any reason to exercise jurisdiction under Article 227 of the Constitution of India in the matter of order passed by the first appellate court in the proceedings arising out Order 39 Rule 1 and 2 CPC. Therefore, I find no merit in the writ petition and the same is hereby dismissed.

(PRAKASH TATIA), J.

c.p.goyal/-